

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 920 of 1986****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

Whether this case involves a substantial question
of law as to the interpretation of the

4 constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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HATHISING MANUFACTURING MILLS COMPANY LIMITED -
Appellant(s)
Versus
KOTHARI SALES CORPORATION - Defendant(s)

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Appearance :

FRESH NOTICE REQD(N) for Appellant(s) : 1,
MR JR NANAVALI for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 29/08/2006****ORAL JUDGMENT**

1. Though served, nobody appears on behalf of the
appellant.

2. Heard Shri JR Nanavati, learned advocate appearing on behalf of the respondent herein – original plaintiff.

3. By way of the present appeal, the appellant herein – original defendant has challenged the judgment and decree passed by the learned City Civil Court at Ahmedabad dated 28-2-1986 in decreeing the said suit and directing the defendant to pay Rs.13,915.36paise as principal amount and Rs.1084.64paise as interest upto the date of the suit i.e. in all Rs.15,000/- with further interest at the rate of 6% from the date of the suit till realization of Rs.13,915.36paise.

4. The original plaintiff filed Summary Civil Suit No.2151 of 1982 in the learned City Civil Court at Ahmedabad against the defendant for the recovery of amount of Rs.15,000/-. It was averred in the plaint that it used to deal in spare-parts and mill gin stores and the defendant used to place orders and used to purchase goods of mill gin and spare-parts from the plaintiff. It was further averred that the dealings upto S.Y. 2037 towards purchase of the goods at the end of Diwali of S.Y. 2037, Rs.10,556.90paise were found due from the defendant. It was further averred that then from 7-11-

1981 to 15-3-1982, the defendant purchased the goods worth Rs.11,552.12paise for which the bills were issued and delivery was also given. The amount of the bills was debited to the defendant's account. Out of the amount due, the defendant had paid by cheques on 25-1-1982, Rs.4272.60paise by cheque dated 8-2-1982, Rs.2275.06paise by cheque dated 13-3-1982 , Rs.788/-. It was further averred that the goods worth Rs.1148/- was returned by the defendant and as such Rs.8187.66paise were credited to the account of the defendant. Therefore, according to the plaintiff, at the end of S.Y. 2038, Rs.13,915.36paise were found due from the defendant. It was further averred that in spite of the repeated demands, the defendant failed to pay the said amount and therefore, the plaintiff was constrained to file the present suit for recovery of Rs.15,000/- in all i.e. inclusive of the principal amount and the interest thereon. The defendant filled application for leave to defend at Exh-12 and the same was granted. It was contended on behalf of the defendant that as it is not a registered firm, the suit is not tenable. It was further submitted on behalf of the defendant that time and again, the plaintiff supplied the rejected goods and the man of the plaintiff was also asked to take away the said rejected the goods. It is

submitted that the goods, which is rejected, is lying with the defendant. It was further submitted that when the plaintiff was paid the cheques and returned the goods, it was agreed by the plaintiff's man that he would take away the balance goods and will not claim anything. It was further submitted that the suit is filed with mala fide intention. The plaintiff filed rejoinder to the leave to defend vide Exh-13. It was denied by the plaintiff that there was no such agreement to accept back or reject the goods. It was submitted by the plaintiff that the goods were not according to the standard or not useful. It was further submitted that no request can be made after unreasonable time. The learned trial Court raised the issues at Exh-26. After considering the documentary as well as oral evidence and considering the conduct of the defendant, the learned trial Court decreed the suit. While decreeing the suit, the learned trial Court considered the oral as well as documentary evidence such as delivery slips at Exh-43 to 83 and account books at Exh-3/1 to 3/23. After considering the oral as well as documentary evidence, the learned trial Court decreed the suit.

5. Shri Nanavati has taken me to the reasoning as well

as other documentary evidence. On considering the reasoning and the documentary evidence as well as oral evidence, it cannot be said that the learned trial Court has committed any error in decreeing the suit. Considering the documentary evidence and other oral evidence, the learned trial Court has rightly decreed the suit and held that the plaintiff is entitled to a principal amount of Rs.13,950/- for the price of the goods sold to the defendant. No illegality has been committed by the learned trial Court. This Court is in complete agreement with the reasoning and finding of the learned trial Court while decreeing the suit.

6. For the reasons as stated above, the appeal fails and is dismissed accordingly. No costs. Ad interim relief if any, stands vacated forthwith.

(M.R.SHAH, J.)

shekhar/-